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**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

July 1, 2015

David Shissler, Director of Water Quality
Water Quality Division
City of Laguna Beach
505 Forest Avenue
Laguna Beach, CA 92651

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Mr. Shissler,

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") alleging violations of the Clean Water Act ("CWA" or "Act;" 33 U.S.C. § 1251 *et seq.*) which River Watch believes have occurred and are occurring at the City of Laguna Beach ("the City") regarding the ownership or operation of the City's Municipal Separate Storm Sewer System ("MS4").

River Watch hereby places the City on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled pursuant to CWA § 505(a)(1)(B), 33 U.S.C. § 1365(a)(1)(B), to file suit against the City, as owner and/or operator of the City's MS4, for alleged violations of Order No. R9-2009-0002, NPDES No. CAS0108740 - *Waste Discharge Requirements for Discharges of Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watershed of the County of Orange, The Incorporated Cities of Orange County, and The Orange County Flood Control District Within the San Diego Region* – and Order No. R9-2013-0001, NPDES No. CAS0109266, *NPDES Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds Within the San Diego Region*, under which the City is a co-permittee. River Watch alleges the City is violating

these Orders as detailed herein, and by reason of the City's records including its reports filed with the California Integrated Water Quality System ("CIWQS") web based information and data program.

River Watch takes this action to ensure compliance with the Act. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a polluter, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342 to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a National Pollution Discharge Elimination System ("NPDES") permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition, such that violation of that NPDES permit condition is a violation of the CWA.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. *see* 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board ("SWRCB") and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the City's operations in the region at issue in this Notice is the Regional Water Quality Control Board, San Diego Region ("RWQCB-R9").

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the City with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

- 1. The specified standard, limitation, or order alleged to have been violated.**

River Watch has identified numerous violations of an order issued by the State with respect to a standard or limitation. See CWA § 505(a)(1)(B), 33 U.S.C. § 1365(a)(1)(B). The specific State Orders are R9-2009-0002 and R9-2013-0001 identified previously.

CWA § 301(a), 33 U.S.C. § 1311(a) states in part: “Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful.” Herein, and by reference to reports submitted by the City to the State, River Watch has identified numerous violations of both State Orders.

2. The activity alleged to constitute a violation.

The City has a history of sewer system overflows (“SSOs”) which enter its MS4. The City has reported to CIWQS 80 days on which SSOs have occurred between January, 2007 and June, 2015, with a combined volume of 816,987 gallons. Eighty-seven percent of that volume – 713,990 gallons – was reported as being discharged to surface waters. In many cases the discharge from the SSO entered the City’s MS4. Several of the SSOs that entered the MS4 were reported as discharging to surface waters including the Pacific Ocean. Discharges from the City’s MS4 have resulting in multiple beach closures.

This Notice also includes multiple violations that may have occurred on the same day as reported to CIWQS, and SSOs which generated from City-owned sewer lines and were discharged to the City’s MS4 and reported to CIWQS by the South Coast Water District which operates a portion of the City-owned sewage collection system and MS4.

Many SSOs consisting of untreated sewage have been discharged to the City’s MS4. Raw sewage is not composed entirely of “storm water,” and there is no authorization by RWQCB-R9 to discharge raw sewage to the City’s MS4 even during a storm event. Discharges of raw sewage (i.e. SSOs) into and from the City’s MS4 cause, or threaten to cause, a condition of pollution, contamination, or nuisance (as defined in Calif. Water Code § 13050) in waters of the State (as defined by California law) and waters of the United States. Raw sewage is listed by the EPA and by the State as a pollutant and contaminant. In some cases these discharges have caused nuisance sufficient to require beach closures by County Health.

In some cases the discharge of raw sewage to portions of the City’s MS4 have also discharged from the MS4 to land. These waste discharges are not an exception to, or authorized by, any waste discharge requirements or the terms described in Calif. Water Code

§ 13264. In some instances raw sewage has been discharged to a portion of the City's MS4 and from there has been dumped, deposited, or discharged directly into waters of the State, waters of the United States, or adjacent to such waters in any manner which may permit its being transported into these waters.

The illegal discharge of untreated wastewater from the City's collection system to its MS4 is a significant contribution to the degradation of the Pacific Ocean and tributary waters such as Aliso Creek and Laguna Canyon Creek, with serious adverse effects on the beneficial uses of these waters. River Watch and its members have an interest in bringing the City in compliance with the CWA. See the VIOLATIONS section of this Notice.

3. The person or persons responsible for the alleged violation.

The entity responsible for the alleged violations is the City of Laguna Beach, identified throughout this Notice as "the City", and those of its employees responsible for compliance with the requirements of the Act.

4. The location of the alleged violation.

The locations of the various violations are all from the City-owned sewage collection system and its MS4 system. Specific violations are identified in records created and/or maintained by or for the City which relate to the City's sewage collection system and its MS4.

5. The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.

River Watch has examined records of the RWQCB-R9 and the Orange County Health Agency pertaining to the City's MS4 and collection system for the period from July 1, 2010 to July 1, 2015. The range of dates covered by this Notice is July 1, 2010 to July 1, 2015. This Notice also includes all violations discovered through litigation for which there were no public records or inadequate public records, and all future violations which occur up to the day of trial.

6. The full name, address, and telephone number of the person giving notice.

The entity giving this Notice is California River Watch, referred to herein as "River Watch." River Watch is a Internal Revenue Code § 501(c)(3) non-profit, public benefit

corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California and offices in Los Angeles, California. The mailing address of River Watch's northern California office is 290 S. Main Street, #817, Sebastopol, CA 95472. The mailing address of River Watch's southern California office is 7401 Crenshaw Boulevard, #422, Los Angeles, CA 90043. River Watch is dedicated to protecting, enhancing, and helping to restore the surface waters and groundwaters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educate the public concerning environmental issues associated with these environs.

VIOLATIONS

River Watch contends that from July 1, 2010 to July 1, 2015, the City has violated the Act as described herein. The below listed violations are reported by the City and evidenced by the CIWQS SSO Reporting Program Database Records, as well as in reports from the City to the Orange County Health Care Agency. Many of the events of non-compliance are multiple violations of the City's NPDES permit and should be considered separate violations, such that a single event may be considered as more than one violation of the CWA. River Watch contends these violations are continuing, or have a likelihood of occurring in the future.

53 Violations of Order No. R9-2009-0002¹

Prohibitions and Receiving Water Limitations

A.1. Discharges into and from municipal separate storm sewer systems (MS4s) in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance (as defined in CWC section 13050), in waters of the state are prohibited.

A.4. In addition to the above prohibitions, discharges from MS4s are subject to all Basin Plan prohibitions cited in Attachment A to this Order.

Attachment A

Basin Plan Prohibitions

1. The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in California Water Code

¹These violations include violations for which there were multiple SSOs occurring on the same day.

Section 13050, is prohibited.

2. The discharge of waste to land, except as authorized by waste discharge requirements or the terms described in California Water Code Section 13264 is prohibited.
7. The dumping, deposition, or discharge of waste directly into waters of the state, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited unless authorized by the Regional Board.
8. Any discharge to a storm water conveyance system that is not composed entirely of “storm water” is prohibited unless authorized by the Regional Board.
9. The unauthorized discharge of treated or untreated sewage to waters of the state or to a storm water conveyance system is prohibited.

5 Violations of Order No. R9-2013-0001

Discharge Prohibitions

II. A.1.a. Discharges from MS4s in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance in receiving waters of the state are prohibited.

II.A.1. c. Discharges from MS4s are subject to all waste discharge prohibitions in the Basin Plan, included in Attachment A to this Order.

Attachment A -

DISCHARGE PROHIBITIONS AND SPECIAL PROTECTIONS

Basin Plan Waste Discharge Prohibitions

1. The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in California Water Code Section 13050, is prohibited.
2. The discharge of waste to land, except as authorized by waste discharge requirements or the terms described in California Water Code Section 13264 is prohibited.
7. The dumping, deposition, or discharge of waste directly into waters of the state, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited unless authorized by the San Diego Water Board.

8. Any discharge to a storm water conveyance system that is not composed entirely of "*storm water*" is prohibited unless authorized by the San Diego Water Board.

9. The unauthorized discharge of treated or untreated sewage to waters of the state or to a storm water conveyance system is prohibited.

CONTACT INFORMATION

River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to:

Jack Silver, Esquire
Law Offices of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175
Email: lhm28843@sbcglobal.net

CONCLUSION

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch has cause to file a citizen's suit pursuant to CWA § 505(a)(1)(B), 33 U.S.C. § 1365(a)(1)(B) against the City for the violations of the CWA identified in this Notice.

During the 60-day notice period, however, River Watch is willing to discuss effective remedies for the violations noted. If the City wishes to pursue such discussions in the absence of litigation, it is encouraged to initiate such discussions immediately so that the parties might be on track to resolving the issues before the end of the notice period. River Watch will not delay the filing of a lawsuit if discussions are continuing when the 60-day notice period ends.

Very truly yours,


Jack Silver

JS:lhm

Service List

Administrator

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

✓ Regional Administrator

U.S. Environmental Protection Agency, Region 9
75 Hawthorne St.
San Francisco, CA 94105

Executive Director

State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812

Executive Officer

Regional Water Quality Control Board
San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108-2700

City Council

City of Laguna Beach
505 Forest Avenue
Laguna Beach, CA 92651